

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04-10194-NG

UNITED STATES OF AMERICA
Plaintiff

v.

CARLOS RUBEN RIVERA
Defendant

.

TRANSCRIPT OF PROBABLE CAUSE AND
DETENTION HEARING
BEFORE THE HONORABLE CHARLES B. SWARTWOOD, III
UNITED STATES MAGISTRATE JUDGE
HELD ON JUNE 28, 2004

APPEARANCES:

For the Government: Attorney Antoinette Leoney, U.S. Attorney's
Office, One Courthouse Way, Boston, MA 02210.

For the Defendant: Timothy Watkins, Esquire, Federal Defender
Office, 408 Atlantic Avenue, Third Floor, Boston, MA 02210;
(617) 223-8061.

Court Reporter:

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Brendan Hickey	4	15	33	36
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<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>IN EVID.</u>
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Government's:

1	Affidavit in support of Complaint	8
2	Certified Copy Conviction-Bristol Superior	13
3	Drug analysis Report	36

P R O C E E D I N G S

(Court called into session)

THE CLERK: Today's date is June 28, 2004 in the case of USA v. Carlos Rivera, Criminal Action No. 04-1789-CBS. Will counsel please identify yourself for the record.

MS. LEONEY: Good morning, your Honor, Antoinette Leoney for the United States.

THE COURT: Good morning.

MR. WATKINS: Good morning, your Honor, Tim Watkins, Federal Defender Office, at counsel table with Carlos Ruben Rivera.

THE COURT: And good morning, Mr. Watkins, and good morning, Mr. Rivera.

We're here for a consolidated probable cause/detention hearing. The grounds stated by the government at your initial appearance were dangerousness, 1(A), 1(C), and risk of flight (2)(A).

Ms. Leoney, are you ready to proceed?

MS. LEONEY: Yes, your Honor. The government is ready.

THE COURT: Call your witness.

MS. LEONEY: The government calls Brendan Hickey to the stand.

(Government witness, Brendan Hickey, sworn)

THE CLERK: Could you state your name and spell your

1 last name for the record.

2 THE WITNESS: Brendan Hickey, H-I-C-K-E-Y.

3 THE COURT: Good morning.

4 DIRECT EXAMINATION

5 BY MS. LEONEY:

6 Q And where are you employed please?

7 A I'm employed in Boston at the bureau of Alcohol, Tobacco,
8 Firearms and Explosives.

9 Q And what is your position there?

10 A I'm a special agent.

11 Q And how long have you been there?

12 A Approximately four years.

13 Q And prior to being employed by the ATF, where were you
14 employed?

15 A I was a criminal investigator or special agent with the
16 Immigration and Naturalization Service in the Province of
17 Puerto Rico and prior to that for the Border Patrol.

18 Q And how long have you been a special agent or Border
19 Patrol officer?

20 A Approximately 10 years.

21 Q And I draw your attention to the instant matter involving
22 in Carlos Rivera. Are you the principal case agent with
23 respect to that investigation?

24 A I am.

25 Q And how long have you been investigating Mr. Rivera with

1 respect to the criminal complaint that's pending before the
2 court?

3 A Since the very end of March.

4 Q And during the course of your investigation, have you, for
5 the most part, been, worked with other agents and/or police
6 officers?

7 A Yes, I have.

8 Q An with respect to the police officers that you've worked
9 with, which department do they belong to?

10 A The New Bedford police department.

11 Q And specifically what officers have been involved in the
12 investigation?

13 A Detective Paul Olivera and Detective Chris Dumont,
14 Detective David Conscacio (ph). That's it.

15 Q And with respect to the ATF agents that you've been, that
16 have worked with you in this investigation, is it a specific
17 group that has been involved with you?

18 A Yes, it is. It's the group that I'm assigned to, Boston
19 Group 4, which covers all of, everything south of Boston,
20 metropolitan area and everything north.

21 Q And with regard to this specific investigation, who are
22 the principle ATF agents besides yourself that have been
23 involved in that investigation?

24 A Agent Stephanie Schafer, Agent Kent Crook, who is my
25 supervisor.

1 MR. WATKINS: Sorry, I didn't get that name?

2 THE WITNESS: Kenneth Crook.

3 A And Agent Robert White. Those are the primary
4 individuals.

5 BY MS. LEONEY:

6 Q And during the course of this investigation, have you
7 spoken with those agents and with the New Bedford police
8 officers that you named and reviewed all of their reports prior
9 to, prior to coming to court today?

10 A Yes, I have.

11 Q And with respect to the criminal complaint that issued in
12 this case, are you the affiant on that criminal complaint?

13 A Yes, I am.

14 Q And in the course of preparing that criminal complaint,
15 did you review and discuss all of the circumstances surrounding
16 the investigation of Mr. Rivera with those officers and agents?

17 A Yes, I did.

18 Q And with respect to your criminal complaint, do you recall
19 the date that you signed the affidavit?

20 A I do not. I believe it was April, excuse me, I believe it
21 was June 22nd.

22 MS. LEONEY: Your Honor, may I approach the witness?

23 THE COURT: Sure.

24 BY MS. LEONEY:

25 Q I'm handing you before you a document, and I'd ask you to

1 take a look at that please, in particular the document itself,
2 but also the last page the signatory page of the document.

3 A Yes.

4 Q Is that the criminal affidavit that you prepared in
5 preparation for the criminal complaint in this case?

6 A Yes, it is.

7 Q And is that your signature--

8 A Yes, it is.

9 Q -- on the document? And what is the date that you signed
10 that document?

11 A June 22nd of this year.

12 Q Now, since your preparation of that affidavit, has, have
13 you reviewed it again in light of today's probable cause
14 hearing?

15 A I have.

16 Q And in light of the arrest of Mr. Rivera, have you
17 reviewed all of the circumstances surrounding Mr. Rivera's
18 arrest?

19 A Yes, I have.

20 Q And is the affidavit--

21 A Everything that's been available to me.

22 Q And is the affidavit now, having all the information
23 together, is there anything in the affidavit that's not
24 accurate?

25 A No.

1 MS. LEONEY: At this time, the government would
2 offer the affidavit of Special Agent Hickey as an exhibit.

3 THE COURT: Any objections?

4 MR. WATKINS: Not for purposes of this hearing.

5 THE COURT: Marked Exhibit 1.

6 (Government Exhibit No. 1, admitted)

7 BY MS. LEONEY:

8 Q Now, Agent Hickey, in your affidavit, you indicate that
9 there was a number of buys involving a firearm, ammunition and
10 drugs, heroin and cocaine to be specific. You also indicate
11 that those purchases were made by a confidential informant; is
12 that correct?

13 A That's correct.

14 Q And with respect to the confidential informant, are you
15 the principle handler for that confidential informant?

16 A Yes, I am.

17 Q And since the, since the filing of your affidavit with
18 respect to the arrest of Mr. Rivera, do you know, were you
19 involved in the arrest of Mr. Rivera?

20 A The planning and organization process. As far as the
21 actual affecting of the arrest, no.

22 Q And did you speak with anybody prior to coming here today
23 with respect to Mr. Rivera's arrest--

24 A Yes.

25 Q -- circumstances surrounding the arrest?

1 A Yes, I did.

2 Q What did you learn with regard to the arrest?

3 A I learned that during the affecting of the search warrant
4 Mr. Rivera was not home, that my supervisor, Ken Crook, called
5 Mr. Rivera and spoke with him and told him the circumstances
6 that were transpiring at the house. Mr. Rivera told him that
7 he was at work, and he would be leaving work immediately to
8 come and turn himself in. I believe an hour past, according to
9 my supervisor. There was no appearance of Mr. Rivera at the
10 house nor did he call my supervisor back. They attempted
11 another call to him, and I believe--

12 THE WITNESS: Your Honor, may I refer to my notes
13 real quick?

14 THE COURT: Sure.

15 MS. LEONEY: These are notes, I believe, your Honor,
16 that Mr. Watkins has already been given a copy of.

17 THE COURT: If he has them and you need them to
18 refresh your recollection, go ahead.

19 MR. WATKINS: That's fine, your Honor.

20 THE COURT: Go ahead.

21 (Pause)

22 A About an hour passed, they called him. He hadn't showed
23 up. They called him again. He didn't answer his phone.

24 Approximately two hours later, I believe, is when they finally
25 reached him. He had his kids call, his mother call and it

1 wasn't until 2:30 that afternoon, approximately 2:30 that
2 afternoon, he finally turned himself in. Throughout the day,
3 he had made arrangements and not followed up on those
4 arrangements to show up.

5 Q And during the, if you know, during the course of the
6 telephone conversations with Mr. Rivera and your supervisor,
7 was there discussion on Mr. Rivera's part that he was going to
8 speak to his attorney prior to that time?

9 A Yes, there was.

10 Q Did your supervisor or anyone else on the arresting team,
11 or part of your investigation for that matter, ever receive a
12 phone call from an attorney representing Mr. Rivera?

13 A I don't believe so.

14 Q And when Mr. Rivera turned himself, finally turned himself
15 in, was he represented by counsel at that time?

16 A I don't believe so. I don't know if he showed up at the
17 police department. I know Mr. Rivera showed up at the police
18 department and turned himself in. I don't know his attorney
19 was with him.

20 Q And do you recall who he turned himself into?

21 A I believe it was Detective Paul Rivera and my boss and my
22 supervisor who is Kenneth Crook.

23 Q And were there any specific issues with respect to that
24 arrest that you, if you recall, or do you know?

25 A No.